

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

KEVONE NEWSOME,

Plaintiff

v.

UNITED STATES OF AMERICA,

Defendant

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CIVIL NO. 1:13-CV-0910

(Judge Rambo)

(Magistrate Judge Carlson)

MEMORANDUM

I. Background

Before the court are two reports and recommendations (Docs. 31 and 40) filed by Magistrate Judge Carlson, in which he recommends that Plaintiff Kevone Newsome's motion to enforce the settlement be denied. Newsome is a federal prisoner who was housed at one time in the United States Penitentiary at Canaan. He brought suit against the United States pursuant to the Federal Tort Claims Act (FTCA), 28 U.S.C. § 2401 *et seq.* and 28 U.S.C. § 2675 *et seq.*, arising out of an alleged episode of food poisoning at that institution in June of 2011. A settlement was reached.

Newsome's present motion seeks to have his settlement paid to him. The Government responded that the full payment has been made to Newsome by the United States Treasury pursuant to 31 U.S.C. § 3716, 21 C.F.R. § 2.85(a)(1), which authorizes the Treasury to collect delinquent non-tax debts to other federal agencies. In a memorandum and order dated April 22, 2014 (Docs. 36 & 37), the court

deferred ruling on the first report and recommendation and remanded the case to the magistrate judge to request information that complied with 31 C.F.R. § 285.5(g)(3), which requires the agency to notify the payee in writing that an offset has occurred and describing the payment, amount and identity of the creditor agency.

By order dated April 22, 2014 (Doc. 38), the magistrate judge directed the government to file with the court (and serve Newsome) with the offset information. The Government complied with the order on May 22, 2014 (Doc. 39). The magistrate judge then filed the most recent report and recommendation (Doc. 40), which again recommends that the motion to enforce the settlement be denied. Newsome has filed objections to this report and recommendation and the matter is ripe for disposition.

II. Discussion

The Government's response to the April 22, 2014 order (Doc. 39) contains an affidavit (Doc. 39-2) executed by Thomas Kobiellus from the Bureau of Fiscal Service, United States Department of Treasury in which he sets forth the procedures followed by that department in compliance with 31 C.F.R. §§ 285.1, 285.5, 285.8 (*id.* at ¶ 5). Also attached to the response is a copy of a letter sent to Newsome dated September 12, 2013 (Doc. 39-1) which advised Newsome of the agency to whom the \$1,500.00 was paid and to the procedures to follow if he had objections to the payment.

There is no argument concerning the right of the United States Treasury to make an offset, such has occurred in this case. The court is also satisfied that Newsome has been given due process.

III. Conclusion

In light of the discussion above, the reports and recommendations of the magistrate judge (Docs. 31 and 40) will be adopted. An appropriate order will be issued.

s/Sylvia H. Rambo
United States District Judge

Dated: July 15, 2014.